

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

MARY E. SHEPARD and the ILLINOIS)
STATE RIFLE ASSOCIATION,)
Plaintiffs,)
-vs-) No. 11-405
LISA M. MADIGAN, solely in her official)
capacity as ATTORNEY GENERAL OF)
ILLINOIS, GOVERNOR PATRICK J.)
QUINN, solely in his official capacity as)
Governor of the State of Illinois,)
TYLER R. EDMONDS, solely in his)
official capacity as the State's Attorney)
of Union County, Illinois, and SHERIFF)
DAVID LIVESAY, solely in his official)
capacity as Sheriff of Union County,)
Defendants.)

MOTION TO DEFER RULING ON PLAINTIFF'S
MOTION FOR SUMMARY JUDGMENT

Now come defendants, Lisa Madigan, Attorney General of the State of Illinois; Patrick J. Quinn, Governor of the State of Illinois; and Tyler R. Edmonds, State's Attorney of Union County, Illinois, by their attorney, Lisa Madigan, Attorney General of the State of Illinois, and, pursuant to Rule 56(d) of the Federal Rules of Civil Procedure, hereby move this honorable Court to defer ruling on plaintiff's motion for summary judgment until after the Court rules on the pending motion to dismiss and the parties are given time for discovery.

In support thereof, it is stated:

1. Plaintiffs brought this action claiming that the Illinois Criminal Code

unconstitutionally infringes upon the plaintiffs' Second Amendment rights because Illinois law prohibits the carrying of loaded or readily loadable firearms in public.

2. Defendants have moved to dismiss, asserting, *inter alia*, that the statutes are subject to intermediate scrutiny and are, therefore, valid because the statutes are substantially related to an important government intent.

3. As argued by defendants in their motion to dismiss, the Court should evaluate the statutes under intermediate scrutiny and the Court may do so without the use of extrinsic evidence.

4. If the Court disagrees with defendants' analysis and believes that a higher level of scrutiny is necessary, defendants must justify the statutes through the use of statistics and expert testimony. *Ezell v. City of Chicago*, __ F.3d __, 2011 WL 2623511 at 17 (7th Cir. 2011).

5. The parties have not yet engaged in discovery and defendants have not had an opportunity to disclose an expert witness or compile the statistics necessary to respond to plaintiffs' motion.

6. If the Court agrees with defendants' contention that intermediate scrutiny applies, the Court will be able to resolve plaintiffs' complaint in its ruling on the motion to dismiss.

7. Defendants should not be required to go to the expense of retaining an expert and compiling statistical support unless the Court determines that intermediate scrutiny is inapplicable to the regulations at issue.

8. Rule 56(d) authorizes the Court to defer ruling on a motion for summary judgment until the parties have engaged in discovery.

WHEREFORE, defendants respectfully request that this honorable Court defer ruling on plaintiffs' motion for summary judgment until after the Court rules on the pending motion to dismiss and the parties are given time for discovery.

Respectfully submitted,

LISA MADIGAN, ATTORNEY GENERAL OF THE STATE OF ILLINOIS; PATRICK J. QUINN, GOVERNOR OF THE STATE OF ILLINOIS; and TYLER R. EDMONDS, STATE'S ATTORNEY OF UNION COUNTY, ILLINOIS,

Defendants,

Terence J. Corrigan, #6191237
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LISA MADIGAN, Attorney General
State of Illinois,
Attorney for Defendants.

By: /s/Terence J. Corrigan
Terence J. Corrigan
Assistant Attorney General

CERTIFICATE OF SERVICE

I hereby certify that on September 2, 2011, I electronically filed Defendants' Motion to Defer Ruling with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following:

whoward@freebornpeters.com

jableyer@bleyerlaw.com

and I hereby certify that on September 2, 2011, I mailed by United States Postal Service, the document to the following nonregistered participant:

None

Respectfully submitted,

By: /s/Terence J. Corrigan

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